

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK: CIVIL TERM : PART 60

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3 In the Matter of the Application of
4 WELLS FARGO BANK, NATIONAL ASSOCIATION, U.S. BANK
5 NATIONAL ASSOCIATION, THE BANK OF NEW YORK MELLON,
6 THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
7 WILMINGTON TRUST, NATIONAL ASSOCIATION, HSBC BANK
8 USA, N.A., and DEUTSCHE BANK NATIONAL TRUST COMPANY
9 (as Trustees, Indenture Trustees, Securities Administrators,
10 Paying Agents, and/or Calculation Agents of Certain
11 Residential Mortgage-Backed Securitization Trusts,
12 Petitioners,

13 For Judicial Instructions under CPLR Article 77 on
14 the Administration and Distribution of a Settlement
15 Payment

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16 Index No. 657387/2017 60 Centre Street
17 New York, New York
18 February 9, 2018

19 B E F O R E :

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DEBRA SMITH,
OFFICIAL COURT REPORTER

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1 THE COURT: Good afternoon, Counsel. This is
2 Judge Friedman. I have a court reporter here. I am
3 going to ask just the counsel who are going to be
4 speaking to state their names for the record and
5 identify their clients and we will ask that some time
6 next week you send us a list identifying all of the
7 counsel who were present on the call and their clients.

8 I have asked my law clerk, Mr. ~~Hamerin~~ ^{Hammeran}
9 (~~phon~~), to confer with you in advance of my going on
10 the record in hopes that we could expedite the matter.
11 Let's see how far we can get given that we're coming
12 close to the end of the court day.

13 May I have speaking counsels' names, please.

14 MS. KLEIN: Good afternoon, Your Honor.

15 This is Gayle Klein with McKool Smith for
16 Nover Ventures LLC.

17 MS. PATRICK: Kathy Patrick for the
18 institutional investors Blackrock, PIMCO and others.

19 MR. GOLDSTEIN: Jordan Goldstein from Quinn
20 Emanuel for the AIG parties.

21 THE COURT: I understand that that should be
22 it so let's begin. I have looked over the redline. My
23 understanding is that only Nover is objecting to the
24 proposed scheduling order submitted by the
25 institutional investors.

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1 The first item seems to be a request for a
2 modification of the provision of the agreement setting
3 forth a procedure for providing information as to the
4 nature of the interest held by the various investors.
5 There is a dispute, as I understand it, about what
6 information should be included.

7 Ms. Klein, your position on that issue?

8 MS. KLEIN: Yes, Your Honor. Thank you.

9 We viewed the proposed language by the
10 institutional investors and the discovery exercise that
11 is shrouded in standing fight. They are putting into a
12 proposed scheduling order an order requiring the
13 parties to produce certain information that should more
14 properly be coming in discovery requests where we can
15 review it, object based on relevance or confidential
16 proprietary sensitive information, and then brief it in
17 a motion to compel to the Court if necessary.

18 We have not had the opportunity for full
19 briefing and we would request the opportunity to do so
20 if the Court is inclined to grant the language proposed
21 by the institutional investors.

22 THE COURT: What are -- I'm sorry, there is a
23 bit of a lag here so sometimes counsel can't hear when
24 I start to speak. We'll get through that, though.

25 Ms. Klein, what are you proposing to disclose

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1 about Nover's interest?

2 MS. KLEIN: Well, pursuant to docket entry
3 65, Your Honor's clarifying order, we propose to
4 disclose to the trustees on a confidential basis the
5 information regarding what we hold. We then propose to
6 disclose to the other investors the names of the trusts
7 in which we claim an interest as well as whether that
8 interest is direct or indirect which would allow anyone
9 who claims that an indirect interest does not convey
10 standing to then object and bring that claim.

11 We don't believe that having an indirect
12 interest precludes standing because Article 77 is clear
13 that it provides for joinders of parties who are
14 interested in trust property.

15 In the Article 77 proceeding context, the
16 First Department has held that even persons who have a
17 possible interest in the remainder in a trust estate
18 have standing and are appropriate parties in an Article
19 77 proceeding.

20 THE COURT: Can you be a bit more specific
21 when you say you are going to disclose information
22 regarding what we hold and whether the interest is
23 direct or indirect?

24 MS. KLEIN: To the trustees, Your Honor, or
25 to the other investors?

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1 THE COURT: The information regarding what we
2 hold, what would be a specific statement as to what we
3 hold?

4 MS. KLEIN: Well, it would be a statement as
5 to the trust in which we claim an interest so it would
6 be the name of the trust and, if required, we would say
7 the class that we hold or claim an interest in and then
8 with respect to information provided to trustees, we
9 could provide the information requested in the
10 institutional investors' proposed order, which is how
11 we claim that interest, be it through a CDO or
12 otherwise.

13 The point being, Your Honor, that this is
14 proprietary confidential commercially sensitive
15 information that contains trade secrets that investors
16 very clearly guard and do not want other investors in
17 the same space to know and, in fact, in the last
18 Article 77 proceeding relating to the approval of the
19 settlement, the Court did not require it for standing
20 purposes and when the institutional investors were
21 asked for it in discovery, they objected to disclosure
22 on this very basis, "The type of information sought was
23 commercially sensitive, contains trade secrets, and/or
24 confidential information concerning investment holdings
25 and strategies." And that was docket number 372 in the

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1 prior Article 77 proceeding, index number 652382/2014.

2 THE COURT: Is there anything else before I
3 hear from Ms. Patrick?

4 MS. KLEIN: One other item, Your Honor.

5 I think the reasons that Nover is standing
6 alone here is that we are alleging interest in 120 of
7 the 250 trusts. No other investors are claiming an
8 interest in that significant of a number of trusts, or
9 if they are, they are already required to publicly
10 disclose the information that is in the institutional
11 investors' proposed order and, therefore, we believe
12 that we are more sensitive to this information and that
13 is why we more astringently object than others who may
14 have decided to agree to the proposed order.

15 THE COURT: Why isn't it satisfactory that
16 the information would be for attorneys' eyes only?

17 MS. KLEIN: Yes, Your Honor, that is a good
18 question. We believe that even if it is for attorneys'
19 eyes only, it would inform advice necessarily that
20 counsel would provide to their clients.

21 We understand that at least counsel for the
22 institutional investors have a Bloomberg terminal,
23 which would allow them on attorneys' eyes only basis to
24 run information regarding our holdings and our
25 strategies and evaluate information to try to gain an

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1 advantage.

2 I am not saying they will do this, but it
3 will allow them to do this, gain an advantage in
4 settlement discussions relating to these trusts. We
5 are quite sensitive to that.

6 There were proposals that suggested that the
7 information could be used for standing purposes only
8 and those were rejected, which has further caused us
9 concern.

10 THE COURT: Ms. Patrick?

11 MS. PATRICK: Yes, Your Honor. Let's start
12 at the beginning. Sometimes the reference has been to
13 language in the institutional investors' order. As the
14 Court noted, this is language that was prepared by all
15 the investors.

16 THE COURT: This was information that was
17 proposed by?

18 MS. PATRICK: This was information by all of
19 the investors except Nover in an effort to expedite the
20 resolution of all issues. So, there is broad consensus
21 among investors who are very differently situated that
22 this is the best procedural path forward. The reason
23 that all of the investors have --

24 THE COURT: You are fading in and out,
25 Ms. Patrick, and that last sentence starting with "The

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1 reason," we didn't get any of it. I think it's coming
2 from your end.

3 MS. PATRICK: Can you hear me?

4 THE COURT: I can hear you now. Let's see if
5 it happens again.

6 MS. PATRICK: I am so sorry. I tried to use
7 the phone in my hotel room and it wouldn't let me dial
8 so I am on my cell phone. Please accept my apologies,
9 Your Honor.

10 THE COURT: That's not a problem.

11 MS. PATRICK: It might make sense since you
12 are on a landline if we will try one more time and if
13 it doesn't work, I am going to suggest Mr. Goldstein
14 proceed, but let me try again.

15 The reason that a simple averment of direct
16 or indirect is not sufficient to establish standing is
17 because it begs the question of what is an interest in
18 trust property. This proceeding is one that concerns
19 duties the trustees owe under the governing agreements.

20 The type of interest held is essential to
21 permit the Court to assess whether the person appearing
22 has an actual protectable interest in the trust
23 property. Providing that information to the trustees
24 is not sufficient because the investors who do claim an
25 interest in trust property and are entitled to be heard

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1 are also entitled to know whether the people standing
2 up and speaking in court about these matters are
3 strangers to the trust or actually have a cognizable
4 legal interest in it. So the proposal that the
5 trustees get the information but the rest of the
6 parties do not is not workable.

7 As to the point that this is allegedly
8 commercially sensitive information, I will note that
9 nothing in the order the investors except Nover has
10 submitted requires the disclosure of the amount of any
11 holdings and our clients did not object to the
12 disclosure of the existence of holdings on a charge by
13 charge basis in the prior proceeding, it was simply to
14 the disclosure of amounts. This order does not require
15 amounts.

16 Whether somebody owns one certificate or a
17 million in a given trust will not be disclosed, only
18 enough information to ascertain whether they have an
19 interest that is cognizable in trust property.

20 As to the Court's question about why
21 attorneys' eyes only are not sufficient, it is
22 ordinarily understood that counsel for all parties will
23 adhere to the strictures of a protective order and the
24 suggestion that because our firm or any of the firms on
25 the phone have access to a Bloomberg terminal that we

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1 would breach the strictures of an order of this Court
2 regarding confidentiality is not worthy of credence, it
3 is not a valid objection.

4 From our perspective, it is quite clear that
5 standing is a threshold issue and detail about the
6 nature of the holdings that are claimed is necessary
7 for the Court to know whether it even has to listen to
8 somebody, and if we don't have to listen to anybody, we
9 don't have standing, then we ought to know that at the
10 outset.

11 So that's the basis on which we have asked
12 for the level of detail that is set forth and we adopt,
13 the Court along with the other investors, do adopt the
14 language in our version on Page 2.

15 THE COURT: Ms. Patrick, can you --

16 MR. GOLDSTEIN: Your Honor --

17 THE COURT: Mr. Goldstein, I want to ask
18 Ms. Patrick a question first, a question or two, and
19 then we will have to figure out what to do about the
20 time and I will, of course, hear from you. If not
21 today, on a continued conference.

22 Ms. Patrick, I think I heard you say that we
23 needed specific information about the interest because
24 it bears on the trustees' duties to different parties
25 with different interests.

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1 MS. PATRICK: Your Honor, no, what I meant to
2 say, and let me rephrase it to avoid any confusion, if
3 someone has an interest in trust property that is
4 legally and cognizably protectable under the terms of
5 the trust instrument, then they would have standing to
6 appear under Article 77.

7 What we are concerned about is person to
8 appear and say I have an interest as an ipsa dixit
9 without providing any concrete information about what
10 that interest is or might be and given the variety of
11 synthetic and artificial structures in the financial
12 markets, someone might have financial exposure to the
13 performance of the trust and yet not have any actual
14 interest in trust property.

15 That's why clarity around the nature of the
16 interest that is held is essential to understand
17 whether someone has standing to be heard in this
18 proceeding, which concerns the duties the trustees have
19 under these governing agreements to those with an
20 interest in the trust's property.

21 THE COURT: I think I am going to need to
22 have a much more concrete example of how this plays out
23 and how it might be that there would be no protectable
24 interest in the trust, some concrete examples of that.

25 Just bear with me for a minute, though, we

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1 have to figure out how to proceed here given the
2 lateness of the hour.

3 (Pause.)

4 THE COURT: Counsel, I think I have said
5 before that the administration is very clear that
6 overtime cannot be authorized in ordinary
7 circumstances. I am willing to continue this call on
8 Tuesday morning -- we are closed on Monday -- and I
9 would like to get a joint letter on Monday morning
10 before the call that concretizes both sides' positions
11 on why it is or is not sufficient to give the more
12 limited information that Ms. Klein is suggesting should
13 be offered.

14 Also, I heard something in there about being
15 willing to provide information about whether the
16 interest is held through CDOs. I think you need to
17 confer about that and see if there is a possibility of
18 resolving any of these disputes.

19 In any event, can you get me a five-page
20 letter on Tuesday morning, say, by 10:00 a.m., to be
21 e-filed with a hard copy to the clerk of Part 60 and
22 can you also arrange with the court reporter from
23 today, if she can do it, to arrange for the transcript
24 from this call on an expedited basis so that I have it
25 also on Tuesday morning before the call and can we

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1 resume at 11:30 a.m. on Tuesday morning?

2 MS. PATRICK: Yes, Your Honor.

3 One point of clarification. That's a
4 five-page joint letter?

5 THE COURT: Yes. That's two and a half pages
6 each.

7 Mr. Goldstein, are you also available?

8 MR. GOLDSTEIN: Yes, Your Honor, I am. I
9 will, of course, defer my remarks until we can speak
10 again.

11 THE COURT: Rest assured I will hear from you
12 on Tuesday. I'm sorry, I did not realize that this
13 call was going to take as long as it has so hopefully
14 we will have enough time on Tuesday morning to finish
15 up.

16 I know there was some concern about missed
17 deadlines. I think we may need to adjust the first
18 deadline, which is the February 9 deadline, so we may
19 need to put that over for a couple of days after the
20 continued conference call. My thinking is that the
21 rest of the dates could presumably be maintained but we
22 can discuss that further on Tuesday morning.

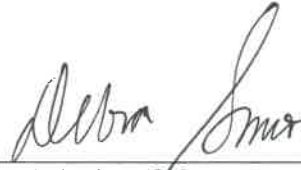
23 I will leave the call so that counsel can get
24 the court reporter's information. Thank you.

25 It is hereby certified that the foregoing is
a true and accurate transcript of the stenographic

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record.

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DEBRA SMITH,
Official Court Reporter

So Ordered 2-13-18
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